

Completing ESA Consultation for Use with EPA's Idaho Small Suction Dredge Mining General Permit

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Several areas important to the protection of endangered species are excluded from EPA's general NPDES permit for small suction dredge mining in Idaho, with one exception. EPA's permit allows miners to enroll in the EPA general permit for these areas, which are not otherwise open to recreational suction dredging, ***if an Endangered Species Act (ESA) determination has been made through another process*** (p.5 of EPA General Permit No.: IDG-37-0000). NOAA Fisheries has prepared the following summary on ESA consultations and determinations to answer some of the initial questions that miners may ask, and to direct miners to additional information about the ESA consultation process.

- NOAA Fisheries makes **ESA determinations** about the effects of federal actions on salmon and steelhead in Idaho. NOAA Fisheries makes these determinations through ESA consultations with other federal agencies.
- ESA consultation can only be initiated by a federal agency, concerning a federal action (for example, Forest Service approval of a miner's Plan of Operation). An individual miner cannot initiate consultation. For recreational suction dredging in Idaho, the federal agencies most likely to be involved are (1) the U. S. Forest Service or BLM, in cases where a miner is requesting approval to operate on federal land; (2) the US Army Corps of Engineers, in cases where a miner's operation requires a Clean Water Act Section 404 permit; and (3) the EPA, if a miner is applying to the EPA for an individual NPDES permit.
- A federal agency is referred to as the *action agency* in the ESA consultation process. To complete ESA consultation on an action (for example, approving a miner's Plan of Operation), the action agency must write a Biological Assessment (BA), and submit this document to NOAA Fisheries. The action agency may request assistance from an applicant (miner) in developing the BA. The BA must describe in detail the proposed action, the baseline (a description of the current habitat conditions in the area where the action will be conducted), and the effects of the action on threatened and endangered species and their habitat.
- NOAA Fisheries reviews the action agency's BA, and then determines whether the effects of the proposed action would jeopardize the continued existence of Idaho's salmon or steelhead species, or adversely modify their critical habitat. NOAA Fisheries records this decision in a document called a Biological Opinion. If the effects of the action are not likely to rise to the level of jeopardizing ESA-listed species or adversely modifying critical habitat, then NOAA Fisheries will approve the action, but may add terms and conditions to minimize the effects to listed species. These terms and conditions normally become part of the permit or other permission granted to the applicant by the action agency. If the Biological Opinion makes a jeopardy or adverse modification determination, then NOAA Fisheries and the action agency will work

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together to see if the action can be modified so that affects to ESA-listed species can be reduced to acceptable levels.

- The ESA consultation process can be lengthy. An action agency needs adequate time to complete the BA and any other environmental compliance documents that may be necessary. NOAA Fisheries may then take up to three months to complete a Biologic Opinion, depending on staff workload at the time.
- Rules regarding ESA consultation are located in 50 CFR 402. The *ESA Consultation Handbook* provides guidance to federal agencies involved in ESA consultations, and is a detailed source of information regarding the consultation process. It is available online at http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf, or by searching "ESA Consultation Handbook." For further information about ESA consultations, you may also contact the NOAA Fisheries Idaho Office at 208-378-5696.